

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2348 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HU SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner

MR PREMAL JOSHI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/09/2000

ORAL JUDGEMENT

#. Having heard the learned counsel for the parties, I am satisfied that this petition deserves acceptance. Prayer is made by petitioner for quashing the orders dated 13th September, 1989 and 16th October, 1989 of the respondent No.1 which are referred to in the order dated

20th November, 1989 of the respondent No.2 and all the consequential orders authorizing the respondents from recovering the amount stated therein from the petitioner's monthly salary.

#. The facts of the case are that the petitioner, Block Extension Educator in the Family Planning Unit attached to the hospital was transferred to Deesa Civil Hospital in the month of July 1980. Under the oral instructions of Dr.C.K.Patel, Superintendent of Deesa Civil Hospital, he was allowed to occupy one room out of the two rooms of Block known as "Dharmashala" attached to the Deesa Civil Hospital. It is further stated that the room was not having any facility like kitchen, bathroom, etc. A statement of fact has also been made on oath by petitioner that the said Dharmashala was used as Government quarter earlier also. The petitioner stated that he did not draw House Rent Allowance (10% of the basic pay revised from time to time) and he was paying Rs.56/= (revised to Rs.68/=) which was deducted from his salary from July 1980 towards House rent. It is not in dispute that from January 1987, the petitioner vacated the premises on his transfer from Deesa to Palanpur in the month of June, 1986. The petitioner states that the amount of Rs.20,000/= (total amount of H.R.A.) which the petitioner did not get from July 1980 to July 1987 plus Rs.5,000/= he paid by way of rent at the rate of Rs.68/= per month. Under the letters dated 18.1.89 and 8.2.89, the Superintendent, Government Hospital, Deesa and Superintendent, Civil Hospital, Palanpur, directed the petitioner to pay Rs.366=50 per month being the market rent of the premises which he occupied at Deesa during the period July 1980 to November 1987, the total accumulated amount being Rs.28,270/=. It is the case of respondents that the petitioner illegally occupied that premises. The petitioner on 5th October, 1989, made representation to the Commissioner, Health and Medical Department, Government of Gujarat, Gandhinagar, wherein he stated all the facts that he occupied that premises under the oral instructions of the then Superintendent of Deesa Hospital. However, that representation did not find favour of the respondents and hence this petition before this court.

#. Manifold contentions have been raised by learned counsel for the petitioner challenging the validity, legality and propriety of the orders of the respondents but as this petition deserves to be allowed only on one ground, all these grounds need not to be referred to and discussed. It is not in dispute, as reply to the special civil application has not been filed by respondent, that

the premises has been occupied by petitioner under the oral instructions of the Superintendent of the Deesa Hospital. It is also not in dispute that earlier the Government servants were occupying the premises of 'Dharmashala'. Further in the facts that the petitioner was not given H.R.A. and from his salary, rent for this premises was deducted for the period in dispute, it is difficult to accept that the petitioner had illegally and unauthorisedly occupied this premises. It is not the case of respondents that the Superintendent of the Hospital had no authority or had not given oral instructions and permitted the petitioner to occupy the premises. It is also not the case of respondents that the Superintendent of Deesa Hospital was held responsible for this act in any way.

#. As a result of aforesaid discussion, this petition succeeds and the same is allowed and it is hereby declared that the act of the respondents to call upon the petitioner to pay the market rent for the period during which this premises was occupied by him as well as accumulated amount of market rent is illegal and arbitrary. Rule is made absolute accordingly with no order as to costs.

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(sunil)